WP(C) 6216/2007

BEFORE

HON'BLE THE MR. JUSTICE AMITAVA ROY

The order dated 27/11/2007 of the Deputy Commissioner cum District Electoral Roll Registration Officer, Karimganj, rejecting the petitioner's claim for inclusion of his name in the electoral roll for the Kaliganj Gaon Panchayat is the subject matter of challenge in the instant proceeding.

I have heard Mr. Talukdar, learned Counsel for the petitioner and Mr. Mahmud, learned Standing Counsel, Assam State Election Commission (hereafter referred to as the Commission). Also heard Mr. G. Soren, learned State Counsel for the other official respondents.

Briefly stated the petitioner's case is that his name is included in the Electoral Roll of Legislative Assembly prepared as per guidelines of the Election Commission of India in respect of Part 40(K) of the Guaspur, Toltola and Ranipar (Block 2) under the No. 4 South Karimganj Legislative Assembly Constituency of the State. He is presently a permanent resident of village Kaliganj, P.O. Kaliganj Bazar, Karimganj in the district of Karimganj. Prior thereto his permanent residence was at village Ranipur, P.O. Jadutilla under the Karimganj Police Station, Assam. In view of the shift in his permanent residence as above, he filed a representation in the year 2006 before the jurisdictional Registration Officer appointed by the Commission for transfer of his name from the electoral roll of the Janakalyan Gaon Panchayat Constituency to that of the Kaliganj Gaon Panchayat Constituency. This was during the exercise undertaken for preparation of the electoral rolls for the forthcoming Panchayat Elections. As his representation/application remained pending while elections were approaching, he on 12/11/2007 approached the Commission for redress. By its order dated 21/11/2007, the Commission required the Deputy Commissioner, Karimganj, to include the name of the petitioner in the Kaliganj Gaon Panchayat. By the impugned order, the petitioner's claim has been rejected on the grounds enumerated therein.

Mr. Talukdar has argued with reference to Section 23(3) of the Representation of the People Act, 1950, that it being permissible to effect amendment, transposition or deletion of any entry in an electoral roll of a constituency till the last date for making nominations for an election, the Deputy Commissioner cum District Electoral Registration Officer, Karimganj, has failed to discharge a statutory duty without any legally acceptable justification and, therefore, the impugned order ought to be interfered with and a direction be issued allowing the petitioner's claim.

Mr. Mahmud in reply has urged that it is still open to the petitioner to approach the Commission in the matter. He, however, emphasized on the constraints of time in view of the issuance of the notification/guidelines by the Commission for the ensuing Panchayat Elections.

Mr. Soren has produced the written instructions from the Deputy Commissioner cum District Electoral Registration Officer, Karimganj, furnishing the grounds in support of the order impugned.

The pleaded facts as well as the competing arguments have been noticed. Clause (b) of Article 243 O mandates that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

The same bar finds reiteration in clause (b) of Section 129 limiting the challenge only by an election petition to be presented within 60 days from the date of declaration of the results to the Tribunal constituted under Section 127.

The Apex Court in N.P. Ponnuswami versus the Returning Officer, Namakkal Constituency, Namakkal, Salem District and others, AIR (39) 1952 SC 64, while assaying the connotation of the word election appearing in Article 329(b) of the Constitution of India prescribing the same bar vis- -vis the elections to the either House of Parliament or the Legislature of the State as the case may be propounded that the said expression has been used in the wide sense to comprehend the entire procedure to be gone through to return a candidate to the Leg

islature. It held that the use of the expression conduct of elections in Article 324 specifically points to the wide meaning and that the said meaning can also be read consistently into the other provisions, which occur in Part XV including Article 329(b). Their lordships held that the scheme of Part XV of the Constitution and the Representation of the People Act seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any Court.

In view of the emphatic pronouncement rendered by the Apex Court in N.P. Ponnuswami, supra, I am of the unhesitant opinion that the instant petition under Article 226 of the Constitution of India is not maintainable in law being in derogation of the bar contained in Article 243 O the Constitution of India as well as Section 129(b) of the Act. The exercise which forms the subject matter of assailment in the instant proceeding is indubitably an integral and inextricable segment of the process of election to the Panchayat Institutions and is unequivocally within the purview of the bar.

The petition is thus dismissed. No costs.